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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

Yokohama, Japan
13 September 1948

UNITED STATES OF AMERICA VS YOSHIAKI KARIYA

Review of the Staff Judge Advocate

1. The attached record of trial of Yoshiaki Kariya at Yokohama, Japan, tried from 18 September 1947 to 25 September 1947, by a Military Commission appointed by paragraph 1, Special Orders Number 216, Headquarters Eighth Army, United States Army, dated 15 September 1947, as amended by paragraph 1, Special Orders Number 219, Headquarters Eighth Army, United States Army, dated 18 September 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Yoshiaki Kariya
AGE: 29 years
RESIDENCE: 1 Jo-Dori, #33, Hokkaido, Muroran City, Chiribetsu-Cho
MARITAL STATUS: Married
RELATIVES: Father, mother, two brothers, five sisters, wife and two children.
EDUCATION: Six years of primary school
VOCATION: Farmer
MILITARY CAREER: 1 March 1940 to 30 December 1941 (Pvt.)

DATE OF CONFINEMENT: 21 December 1945
DATE OF ARRAIGNMENT: 18 September 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 18 thru 25 September 1947
DATE OF SENTENCE: 25 September 1947
SENTENCE: CHL for eleven (11) years.
CLEMENCY RECOMMENDED BY COMMISSION: No.

2. Synopsis of Charge, Pleas, Findings and Legal Sufficiency:

Charge and Specifications	Pleas	Findings	Legally Sustained
Charge: Accused at times and places set forth in specifications hereinafter listed, and during the time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: Between 15 April 1943 and 7 May 1943, accused did willfully and unlawfully mistreat J. Pellencau, a Dutch Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death.	NG	G, except the words "thereby contributing to his death"; of the excepted words, Not Guilty.	Yes
Sp 2: In or about March 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat D. G. Bailey, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes

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Sp 3: In or about March 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat G. Bolton, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 4: In or about March 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat A. G. Dowsett, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 5: In or about March 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat T. Kime, A British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 6: In or about March 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat T. Owens, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 7: In or about March 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat D. Smith, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 8: In or about March 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat S. H. Fawcett, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 9: In or about March 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat W. M. Adams, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 10: In or about April 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat Tan Chew Oon, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes

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Sp 11: In or about August 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat E. V. Crozier, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 12: In the Spring of 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat G. L. Stacey, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 13: In February 1943 and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat R. Welsh, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 14: In or about June 1943, and on numerous other occasions between 1 February and 11 May 1945, accused did willfully and unlawfully mistreat A. Souter, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 15: On numerous occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat L. B. Blasbery, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 16: On numerous occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat J. Parry, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 17: On numerous occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat T. Denny, a British Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 18: In or about February 1943 and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat J. C. Laird, an American Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 19: In or about June 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat J. W. de Wilde, a Dutch Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes

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Restricted

Sp 20: In or about June 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat J. Muller, a Dutch Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 21: In or about June 1943, and on numerous other occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat F. Antonie, a Dutch Prisoner of War, by beating and otherwise abusing him.	NG	G	Yes
Sp 22: On numerous occasions between 1 February 1943 and 11 May 1945, accused did willfully and unlawfully mistreat G. J. van Wieringhen Borski, J. Jongsma, W. Altmann, Dutch Prisoners of War, T. Beech, T. Bassham, A. G. Davies, J. Swain, British Prisoners of War, and J. Kenner, an American Prisoner of War, and numerous other Allied Prisoners of War, other than as alleged in Specifications 1 to 21, inclusive, by beating and otherwise abusing them.	NG	G, except the words "G. J. van Wieringhen Borski, T. Bassham"; of the excepted words, Not Guilty.	Yes

3. Summary of the Evidence:

a. For the Prosecution.

Yoshiaki Kariya, hereinafter called the accused, was employed by the Japanese Army from about February 1943 to May 1945 as a civilian guard at the Hakodate Prisoner of War Branch Camp Nol 1, Muroran, Hokkaido, Japan, where approximately 400 American, British and Dutch Prisoners of War were confined (Exs. #2, 11, 17). During the day, those prisoners able to do so, worked at an iron foundry and blast furnace near the camp (Exs. #2, 17).

Accused supervised a group of approximately 30 Allied Prisoners of War at the camp inspecting their barracks, taking evening roll call to determine the number of Prisoners of War able to work the following morning, accompanying Prisoners of War to and from work, and guarding them while at work (Exs. #2, 17). In this association with the Prisoners of War, accused committed numerous unprovoked and violent assaults upon them, which acts constituted the bases for the charge and specifications in this trial, each of which is hereinafter discussed:

As to Specification 1 (Pellencau): About April 1943, J. Pellencau, a Dutch Prisoner of War, just released from the prison hospital, was accused of having stolen a Japanese carpenter's lunch box and accused severely beat him on his head and face with an ammunition belt. The accused then required Pellencau, dressed in light clothing and without shoes, to stand in front of the guard room and a cell in sub-zero weather for four days and nights. During this time the accused severely beat Pellencau several times with his fists, ammunition belt, and by kicking him as he lay on the ground. After four days Pellencau, nearly frozen stiff, was removed to the prison hospital where he died shortly after admittance. Dr. Lutter, Dutch prison doctor of the camp, stated that Pellencau had died of exposure and beatings. The accused particularly disliked Pellencau because he had refused to give the accused his personal blanket at which time the accused stated that "Pellencau would die in Japan". (Exhibits #2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 22, 24, 26; R-48, 49, 50, 63, 64).

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As to Specification 2 (Bailey): In March 1943, at evening roll call, accused struck Bailey, a British Prisoner of War and other Prisoners of War in the billet, with his fists because accused stated that the billet was untidy. (Exs. #2, 15, 17, 19). Again in March 1943, accused struck Bailey and other Prisoners of War with a bamboo cane, after asking each his nationality. (Exs. #4, 11). In June 1943, accused beat Bailey and other Prisoners of War with his leather belt because one of them was suspected of having purchased a fish cake from a Japanese civilian (Ex. #16). In the winter of 1943, accused struck Bailey, and other Prisoners of War, with a stick of wood across their faces, heads and shoulders "until the piece of wood fell apart", for burning wood in the billet's stove. Bailey received the worst beating and showed its effects for over a week (Ex. #2). On two occasions, accused beat Bailey with his rifle butt (Ex. #15). About once a month during 1943 and 1945, when Bailey reported that he was too ill to work the next day accused beat him until he fell or stated that he would work (Exs. #2, 3, 15, 20). Bailey identified two photographs of the accused as the civilian guard known to him as "Singapore Lil" and "Singapore Bastard" who committed the acts hereinbefore stated (Ex. #15).

As to Specification 3 (Bolton): In March 1943, at evening roll call when Bolton, a British Prisoner of War, reported he was too ill to work the next day, accused beat him with a bamboo stick until he stated he would work (Exs. #2, 3, 20). Again in March 1943, at evening roll call, because accused was dissatisfied with the appearance of the billet, he beat Bailey severely (Exs. #17, 19). In June 1943, accused beat Bailey and other Prisoners of War across the face with his leather belt because one of the Prisoners of War in the billet where Bailey was quartered had purchased a fish cake from a Japanese civilian (Ex. 16). In the summer of 1943, because Bailey and Denny, another Prisoner of War, had not folded their blankets as accused desired, accused struck Bailey twice and ordered Bailey and Denny to fight each other for 20 minutes, until both were badly beaten and exhausted (Ex. #2). On four other occasions in the middle of the night, usually about 0300, accused woke Bailey and other Prisoners of War, and beat them for no apparent reason (Ex. #11, 16). On another occasion accused beat Bailey and other Prisoners of War for burning fire wood in the stove located in their billet (Ex. #2). Bailey identified a photograph of the accused as the civilian guard known to him as "Kardia" who committed the acts hereinbefore stated (Ex. #16).

As to Specification 4 (Dowsett) In February or March 1943, at evening roll call, accused beat Dowsett, a British Prisoner of War, severely for no given reason (Ex. #11). In March 1943, at evening roll call, accused beat Dowsett severely because the billet where he was quartered was not in proper order (Exs. #17, 19). In June 1943, accused beat Dowsett with his leather belt because one of the Prisoners of War in the billet where Dowsett was quartered was suspected of purchasing a fish cake from a Japanese civilian (Ex. #16). In July 1943, at sick call, when Dowsett reported he was too ill to work the next day, accused beat him until he fell and stated that he would work. Beatings of this nature occurred regularly (Exs. #2, 3, 19, 20). On several occasions, between 1943 and 1945, Dowsett was beaten without provocation (Exs. #4, 20, 23). Dowsett identified the two photographs of the accused, known to him as "Kura San", the civilian guard who committed the acts hereinbefore stated (Ex. #6).

As to Specification 5 (Kime): In March 1943, at evening roll call, accused struck Kime, a British Prisoner of War, several times with a bamboo stick because he stated he was too ill to work the next day (Exs. #2, 3, 20). Again in March 1943, accused struck Kime, and other Prisoners of War, with a bamboo cane after asking each his nationality (Ex. #4). Again in March 1943, at evening roll call, accused beat Kime, and other Prisoners of War, because the billet in which Kime was quartered did not pass accused's inspection (Exs. #17, 19). Again in March 1943, Kime was beaten by the accused with a heavy bamboo stick for no apparent reason (Ex. #16, 23). In April 1943, accused beat Kime with his fists because Kime displayed a picture of his wife and baby on a shelf above his bed (Exs. #2, 4). In the Spring of 1943, Kime, in charge of issuing rice to the Prisoners of War, was late reporting for work and accused struck Kime

Restricted

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Restricted

across the head and face with a stick several times (Ex. #2). In June 1943, accused beat Kime and other Prisoners of War with a leather belt because one of the Prisoners of War in the billet where Kime was quartered was suspected of purchasing a fish cake from a Japanese civilian (Ex. #16). On another occasion, Kime was severely beaten by the accused because he went to the latrine without a hat (Ex. #4).

As to Specification 6 (Owens): In March 1943, at evening roll call, accused struck Owens, a British Prisoner of War, with a leather belt for about 10 minutes because he reported that he was too ill to work the following day (Exs. #3, 20). Again in March 1943, accused struck Owens and other Prisoners of War with a bamboo cane after asking each his nationality (Ex. #4). Again in March 1943, at evening roll call, Owens and other Prisoners of War were beaten by the accused because the billet in which they were quartered did not pass inspection (Ex. #17). On numerous occasions, accused struck Owens with his fists and with a stick when accused discovered a stick of wood concealed in his clothes (Ex. #17). On another occasion, accused beat Owens with a stick because Owens displayed a picture of his mother near his bed (Ex. #2). On numerous other occasions, late at night, accused awoke Owens and other Prisoners of War and beat them with his leather belt for no given reason (Ex. #2, 11, 17, 23).

As to Specification 7 (Smith): In March 1943, at evening roll call, when Smith, a British Prisoner of War, reported he was too ill to work the following day, accused beat him with a bamboo stick until he fell and agreed to work (Exs. #2, 3, 17, 30). Again in March 1943, accused beat Smith and other Prisoners of War with a heavy bamboo stick for no given reason (Exs. #11, 23). In the Spring of 1943, at evening roll call, Smith and other Prisoners of War were beaten by the accused because the billet in which Smith was quartered did not pass inspection (Ex. #19). Smith identified a photograph of the accused as the civilian guard who committed the acts hereinbefore mentioned (Ex. #11).

As to Specification 8 (Fawcett): In March 1943, at evening roll call Fawcett, a British Prisoner of War, was beaten when he reported that he was too ill to work, which beating continued until he fell and agreed to work the next day (Exs. #2, 3, 19). Again in March 1943, because a kitchen table that he had cleaned did not pass inspection by the accused, accused beat him with a stick for five minutes, ordered him to re-scrub the table and again beat him (Ex. #2). Again in March 1943, Fawcett was severely beaten by the accused with a heavy bamboo stick for no given reason (Exs. #11, 20, 23). Again in March 1943, at evening roll call accused beat Fawcett and other Prisoners of War because the billet in which Fawcett was quartered did not pass inspection (Exs. #17, 19). In July 1943, accused beat Fawcett severely because he was suspected of having purchased a fish cake from a Japanese civilian (Ex. #5). In December 1943, while cleaning his teeth, Fawcett was struck on the head and face by the accused for no apparent reason (Ex. #20).

As to Specification 9 (Adams): In March 1943, Adams, a British Prisoner of War, was the last man reporting for work call and accused struck him several times with a clip board, knocking him against the barracks wall, after which accused kicked him (Ex. #2). Again in March 1943, at evening roll call, accused beat Adams and other Prisoners of War because the billet in which Adams was quartered did not pass inspection (Ex. #17). About June 1943, accused beat and kicked Adams and other Prisoners of War because one of the Prisoners of War in the billet in which Adams was quartered had purchased a fish cake from a Japanese civilian (Ex. #16). In connection with the Pellencau incident, (see paragraph on Specification 1 above) Adams was in charge of the barracks where the Japanese carpenter's lunch box had disappeared. When accused demanded that Adams state who stole the lunch box and Adams replied that he was unable to do so, accused struck Adams several times with his fists (Ex. #3). On numerous occasions between 1943 and 1945, accused beat Adams without provocation (Exs. #4, 20).

As to Specification 10 (Oon): In March 1943, at evening roll call, accused beat Oon, a British Prisoner of War, and other Prisoners of War, because the billet in which Oon was quartered did not pass inspection (Ex. #17). In April 1943, accused beat and kicked Oon severely because Oon attempted to trade a pair

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of boots in order to procure medicine for Campbell, another Prisoner of War. This incident was corroborated by Laird, a Prisoner of War, who observed it and testified as a witness for the prosecution (Exs. #2, 3, 23; R-51). In December 1943, accused beat Oon on numerous occasions for no apparent reason (Ex. #2). Again in December 1943, accused stated that Oon had broken a rule and severely beat him on the head and face with a stick (Ex. #3). Between 1943 and 1945, on numerous occasions, accused beat and kicked Oon for no apparent reason (Exs. #4, 17). Oon knew the accused as "Singapore Lil" (Ex. #3).

As to Specification 11 (Crozier): On numerous occasions between 6 February 1943 and 16 December 1943, Crozier, a British Prisoner of War, who was in charge of a group of Prisoners of War, was beaten by the accused when any Prisoner of War of his group committed a violation of rules (Ex. #2). In the Spring of 1943, accused beat Crozier and other Prisoners of War because the billet in which Crozier was quartered did not pass inspection (Ex. #19). In August 1943, accused ordered Crozier to have a group of 10 sick Prisoners of War pack and carry 10 tons of coal a distance of 50 yards. At the end of the day when Crozier reported that the work had not been completed, accused beat him with a leather belt (Ex. #18). On numerous occasions during 1943 and 1945, the accused beat Crozier without provocation (Exs. #4, 17, 20, 23). Crozier identified a photograph of the accused as a civilian guard known to him as "Karia" who committed the acts hereinbefore stated (Ex. #18).

As to Specification 12 (Stacy): In March 1943, Stacy, a British Prisoner of War, having been excused from attending roll call by a Japanese medical orderly, was severely beaten by the accused who struck him with his fist and kicked him until he fell for failure to attend roll call (Ex. #2). In the Spring of 1943, Stacy, while sick, was ordered out of bed by the accused. Accused kicked him because he got out of bed slowly (Ex. #19). In June 1943, at evening roll call, Stacy was beaten by the accused because he was sick and finally agreed to work the next day in order to stop the beating (Ex. #2). Again in June 1943, and on numerous other occasions Stacy was beaten by the accused for no apparent reason (Ex. #17, 19). On one occasion accused beat Stacy and other Prisoners of War because accused stated that the billet in which Stacy was quartered did not pass inspection (Ex. #19). On numerous other occasions between 1943 and 1945, Stacy was beaten by the accused without provocation (Exs. #4, 20, 23). Stacy identified a photograph of the accused as the civilian guard known to him as the "Sadist" who committed the acts hereinbefore stated (Ex. #19).

As to Specification 13 (Welsh): In February 1943, because Welsh, a British Prisoner of War, did not bow, the accused struck him several times on the face, knocking him down. In March 1943, when Welsh reported that he was ill at evening roll call, accused kicked him (Ex. #2). Again in March 1943, at evening roll call, accused beat Welsh and other Prisoners of War because the billet in which Welsh was quartered did not pass inspection (Ex. #17). In the Fall of 1943, Welsh, who suffered from chronic lumbago, was assigned to a job of caring for rabbits. Because he permitted a rabbit to escape, although it was later caught, accused beat Welsh with a bamboo pole (Ex. #2). In the Winter of 1943, because Welsh was in a billet where wood was burning in the stove, accused beat Welsh and other Prisoners of War with a stick of wood and confined them to an unheated guard tower for three nights (Exs. #2, 16, 18). On another occasion, accused forced Welsh to fight another Prisoner of War until both were exhausted and badly beaten (Ex. #2). On numerous occasions between 1943 and 1945, accused beat Welsh for no given reason (Exs. #4, 17, 18, 23). Welsh knew the accused as "Kariyasan" (Ex. #20).

As to Specification 14 (Souter): In March 1943, because Souter, a British Prisoner of War, stated he was too ill to work the next day, accused beat him until he was unconscious (Ex. #20). In June 1943, accused beat and kicked Souter because he was suspected of having purchased a fish cake from a Japanese civilian (Ex. #16). In the Winter of 1943, accused beat Souter and other Prisoners of War with a stick of wood and his fist because wood was found burning in the billet stove where Souter was quartered (Ex. #2). On numerous occasions between 1943 and 1945 Souter was beaten by accused without provocation (Ex. #20).

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As to Specification 15 (Blasbery): In March 1943, the accused struck Blasbery, a British Prisoner of War several times with his fist for no good reason (Ex. #2). In June 1943, because a Prisoner of War had purchased a fish cake from a Japanese civilian, accused beat and kicked Blasbery and other Prisoners of War (Ex. #16). On two other occasions accused beat Blasbery with the butt of his rifle for roasting potatoes and cooking rice on the billet stove (Ex. #10). On numerous occasions between 1943 and 1945, accused beat Blasbery for no given reason (Exs. #4, 17, 19, 20). Blasbery identified a photograph of the accused as the civilian guard known to him as "Korea-san" who committed the acts heretofore stated (Ex. #10).

As to Specification 16 (Parry): Accused beat Parry, a British Prisoner of War, more often than any other Prisoner of War in camp (Ex. #2, 3). In March 1943, accused beat Parry several times severely for no good reason (Exs. #11, 17). In May 1943, when Parry stated he was too ill to work the accused beat him viciously until he collapsed (Exs. #2, 18, 21). In June 1943, Parry was late to work call and accused beat him about the face and head with a bamboo pole (Ex. #2). Parry was beaten nearly every day (Exs. #2, 3). In 1943, on numerous occasions Parry was beaten by the accused at the blast furnace where Parry worked (Ex. #10). On numerous occasions between 1943 and 1945, accused beat Parry without provocation (Exs. #4, 20, 21).

As to Specification 17 (Denny): In March 1943, at evening roll call accused severely beat Denny, a British Prisoner of War, because the barracks in which Denny was quartered did not pass inspection (Ex. #15). In June 1943, accused severely beat Denny and other Prisoners of War because another Prisoner of War in his barracks had purchased a fish cake from a Japanese civilian (Ex. #16). In the summer of 1943, because Denny had folded his blankets improperly, accused ordered Denny to fight another Prisoner of War, demonstrating by knocking Denny down twice. Denny and the other Prisoner of War fought for 20 minutes, until both were exhausted (Ex. #2).

As to Specification 18 (Laird): In March 1943, an American Prisoner of War, Laird, as medical aide in the prison hospital, tried to obtain an extra ration of coal for the hospital, a ration being two shovelsful per 24 hours per stove. Because of this, accused beat Laird on his face and body with a coal shovel and with his fists for 15 minutes (Ex. #2; R-50). In March 1943, accused beat Laird without provocation (Ex. #2). In November 1943, because Laird tried to sell a pair of trousers for food and cigarettes, accused and two other guards beat him with a bamboo club and belts for 30 minutes. That evening accused required all the Prisoners of War in his barracks, about 25 or 30, to strike Laird five times each, after which the accused struck him twice, knocking him to the ground (Ex. #2; R-50, 51). Between 1943 and 1945, for little or no reason, accused beat Laird on numerous occasions (Exs. #4, 17, 18).

As to Specification 19 (de Wilde): In February 1943, and for several months thereafter, the accused beat de Wilde because he reported that he was too ill to work (Ex. #22). In July 1943, accused beat de Wilde into unconsciousness with his leather belt for no given reason (Exs. #7, 9, 17, 20). In January 1944, de Wilde, suspected of taking firewood to his billet, was confined by accused in a guard tower for three nights in sub-zero weather (Ex. #16). On numerous occasions in the middle of the night, accused awoke de Wilde and other Prisoners of War of his barracks, and required them to fight each other (Ex. #22). De Wilde identified a photograph of the accused as the civilian guard known to him as the "Sadist" who committed the acts hereinbefore stated (Ex. #22).

As to Specification 20 (Muller): In February and June 1943, Muller, a Dutch Prisoner of War, white haired and elderly, was beaten by the accused for no given reason. In July 1943, two Prisoners of War were discovered trying to buy cigarettes from a Japanese civilian and accused beat all Prisoners of War, including Muller, in the billet (Ex. #8). While Muller was walking to work, accused beat him over the head with a stick (Ex. #8).

As to Specification 21 (Antoine): In July 1943, a Dutch Prisoner of War, Antoine, was beaten because two Prisoners of War in the billet where he

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was quartered had tried to purchase cigarettes from a Japanese civilian. Between 1943 and 1945, accused beat Antoine without provocation on numerous occasions (Exs. #4, 26).

As to Specification 22:

Jongsma: In June 1943, accused slapped Jongsma, a Dutch Prisoner of War, five or six times because his shoes were in the middle of the barracks where he was quartered (Ex. #2).

Altman: On numerous occasions between 1943 and 1945, accused beat Altman, a Dutch Prisoner of War, without provocation (Exs. #4, 17, 26).

Beech: In March 1943, at evening roll call, accused beat Beech, a British Prisoner of War, severely when the billet in which Beech was quartered did not pass inspection (Exs. #17, 23). On numerous occasions in 1943, accused forced Beech to fight other Prisoners of War. On the first of those occasions Beech refused to fight but after accused had beaten him badly, Beech agreed (Ex. #10).

Davies: In March 1943, at evening roll call, accused found the billet in which Davies, a British Prisoner of War, was quartered in some disorder and struck Davies in the face with his fists (Ex. #17). Between 1943 and 1945, and on numerous occasions, Davies was beaten by accused because he was too ill to report for work.

Swain: Between 1943 and 1945 on numerous occasions, accused beat Swain, a British Prisoner of War, when the billet in which he was quartered failed to pass inspection (Ex. #2).

Kenner: In March 1943, at evening roll call, accused beat Kenner, an American Prisoner of War, because the billet in which Kenner was quartered failed to pass inspection (Ex. #2).

Numerous other Allied Prisoners of War: See paragraphs on Specifications 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, above.

b. For the Defense.

Counsel for the accused made a motion for a finding of not guilty as to Specification 1, in that the accused contributed to the death of Pellencau which motion was denied.

The accused, having been advised of his rights as a witness, elected to take the stand and testify under oath in his own behalf (R. 81). The accused stated that he was a "look-out man" at the Hakodate Prisoner of War Camp No. 1 from 14 February 1943 to 10 July 1943 and his duties were to collect the Prisoners of War at the camp and escort them to the factory. He stated that he did not strike Pellencau or any other Dutch Prisoner of War in front of the guardhouse between 15 April and 7 May 1943; and that he did not confine him nor had he any authority to confine him to the guardhouse (R. 86). He also stated that he did not recall Bailey, Bolton, Dowsett, Kime (R. 83), Owens, Smith, Fawcett (R. 84), Stacey, Welsh, Souter, Blasbery, Parry, Denny (R. 85), de Wilde, Muller, Antonie, Jongsma, Beech, Bassham, Davies, Smith or Kenner (R. 86) He stated that he did recall Adams and that he remembers pushing him with a wooden clip board at morning roll call (R. 84). He stated further that at night roll call he had hit Crozier with "a pencil in the lower part of his foot" (R. 85). He further recalled having struck Laird twice with his open hand on the jaw when he caught Laird taking additional coal. He further recalled striking a Dutch Prisoner of War for trying to exchange shoes for cigarettes. He stated that the person involved was not Oon (R. 86). He further stated that he had struck an English Prisoner of War with his open hand on the face for not saluting him in front of the guardhouse (R. 86). He further stated that he had struck Smith once on the face with his open hand for having cigarettes in his possession. He stated, however, that he had never ordered Prisoners of War to

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strike each other, had never struck Prisoners of War for bringing firewood into camp and had never struck, beaten, mistreated, or abused any Prisoner of War other than those mentioned above (R. 87).

On cross-examination he was asked whether he had been punished for mistreatment of Prisoners of War, to which he replied in the negative. Prosecution entered into evidence a record of the Imperial Japanese Government which included the fact that on 10 December 1944, the accused was given five days solitary confinement in quarters for striking a prisoner who had exchanged some army shoes for cigarettes. Accused admitted the incident involved but said that he had not received the punishment (R. 89). He further admitted under cross-examination that he had made three Prisoners of War stand in front of the guardhouse because he had found coal under their beds. He stated that he had done this on orders of his camp commander (R. 90).

Kimio Ito called as witness for the defense, stated that between February and July 1943 he was employed in the Finance Section of the Prisoner of War Camp, and that at that time the duties of the accused were to take the Prisoners of War to work. After July the accused was a guard in the camp and carried a rifle in the performance of his duties (R. 91)

4. Opinion:

The Commission was constituted by proper authority and had jurisdiction over the accused and the offenses charged. There is no evidence that the accused was insane at the time of the alleged acts or at the time of the trial and sanity was not an issue in this case. The accused was ably defended, cooperated in his own defense, cross-examined the prosecution witnesses at great length, and took the witness stand in his own defense. The testimony of the accused on the stand showed him to be an individual of some intelligence.

As to the Charge, there is ample proof that the accused ill-treated prisoners of war which is a violation of the laws and customs of war as evidenced by mass beatings, ordering Prisoners of War to inflict punishment upon each other, waking them in the middle of the night to disturb their rest, requiring them to perform hard labor when they were ill, and beating them without reason. (par 2b Letter SCAP, File AG 000.5, 5 Doc 45 LS, dated 5 December 1945, Subject: Regulations Governing the Trials of Accused War Criminals.) The affidavits admitted into evidence were admissible (par 5d, (1), Ibid). Each specification of which the accused was found guilty alleges an offense and each specification was substantially proved.

Counsel for defense objected to the admissibility of Campbell's affidavit (Ex. #2) not as to its content but because, as an exhibit, it would become part of the record available for study by the Commission, which objection was properly overruled. Regulations governing the trials of accused war criminals provide that affidavits presented to the Commission are not to be read aloud unless desired by the Commission (Letter, Hq. Eighth Army, 6 July 1948, subject: Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals). Affidavits accepted by the Commission thereunder necessarily become part of the record of trial as exhibits and made a part of the case (25 CJ 166).

All exhibits admitted in evidence were admitted either without objection by the defense or over minor objections which the Commission properly overruled. The Commission carefully excluded all evidence not legally relevant.

Accused was positively identified by photographs. Nicknames used for accused were "Singapore Lil", "Singapore Bastard", "The Sadist" and variations of accused's name (Exs. #2, 3, 4, 6, 7, 9, 11, 12, 13, 18, 19, 22; R. 48, 68).

No ruling of the Commission adversely affected the substantial rights of the accused. All findings of guilty of the Specifications and the Charge are substantially proved and should be approved.

PURL: https://www.legal-tools.org/doc/d74f87/

5. Recommendations:

The sentence is legal and adequate. It is recommended that the findings of the Commission be approved. It is recommended that the sentence be approved but owing to the length of time the accused has been in confinement prior to date of sentence it is recommended that eighteen months of the confinement at hard labor imposed be remitted, as thus modified it is recommended that the sentence be duly executed.

6. Action:

A form of action designed to carry these recommendations into effect is attached.

SAMUEL S. WOLF
Major JAGD
Reviewer

I concur in general. The sentence is grossly inadequate for conviction of the twenty-two specifications of numerous brutal beatings. Nevertheless, pre-trial confinement is in no way to be considered as confinement served in expiation for offenses of which an accused is later convicted. Therefore a reviewing authority should consider such restraint entirely separately from that adjudged by a commission. The blackest rogue is entitled to an early trial under the enlightened rules of civilized nations. When trials are postponed, as this one was, because of the great number of those awaiting justice, fair allowance should be made for undue pre-trial confinement regardless of the inadequacy of a sentence. This is all the more true since commissions are instructed that pre-trial confinement is not to be considered in adjudging sentences.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

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